IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Moola Ram . Vs. Smt. Radha & Anr.

S.B.CRIMINAL MISC. PETITION NO. 1682/2007

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Date of Order : 26/10/2007

PRESENT

HON'BLE MR. H.R.PANWAR, J.

Mr. Sunil Mehta for the petitioner.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 04.10.2007 passed by Additional Sessions Judge No.1, Bikaner (for short 'the revisional court' hereinafter) in Criminal Revision No.53/2007, whereby the revision petition filed by the petitioners against the order dated 10.4.2006 passed by Additional Chief Judicial Magistrate No.3, Bikaner (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioner at length. Carefully gone through the orders impugned passed by both the courts below.

The respondent No.1 Smt. Radha filed an application

under Section 125 Cr.P.C. seeking monthly allowance of maintenance. During the pendency of the application under Section 125 Cr.P.C., she sought the interim monthly allowance of maintenance. The trial court by order dated 10.4.2006 granted interim monthly allowance of maintenance at the rate of Rs.1500/- in favour of the respondent No.1 and against the petitioner.

The interim monthly allowance of maintenance is an interim arrangement during the pendency of the main case and the order is based on the pleadings of the parties. The parties are yet to lead evidence and thereafter only the trial court can determine as to whether the respondent is entitled for the maintenance and if entitled to what extent. These questions can only be gone into in the trial of the main case.

It is contended by learned counsel for the petitioner that there was some agreement between the petitioner and the respondent No.1 by which the respondent No.1 is not entitled for maintenance. Be that as it may, the agreement is yet to be established and proved by evidence when the parties lead evidence. In this view of the matter, when both the courts below have concurrently found that the respondent No.1 is entitled for interim monthly allowance of maintenance, I do not find any error in the orders impugned. It is settled law that powers under Section 482 Cr.P.C. are to be exercised sparingly,

consciously and in rarest of rare case. The case in hand is not of that nature.

The criminal misc. petition is therefore, dismissed.

(H.R.PANWAR),J.

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S.B.CR. MISC. STAY PETITION NO .1262/07
IN
S.B.CRIMINAL MISC. PETITION NO. 1682/2007
(Moola Ram Vs. Radha and Anr.)

Date of Order : 26/10/2007

HON'BLE MR. H.R.PANWAR, J.

Mr. Sunil Mehta for the petitioner.

Since the criminal misc. petition itself has been dismissed, the stay petition also stands dismissed.

(H.R.PANWAR),J.

rp.